

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
CITIZENS COMMUNICATIONS COMPANY,)
KAUAI ELECTRIC DIVISION)
and)
KAUAI ISLAND UTILITY CO-OP)
For Approval of the Sale of Certain)
Assets of Citizens Communications)
Company, Kauai Electric Division)
and Related Matters.)

DOCKET NO. 02-0060

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DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

ORDER NO. 19496

Filed July 31, 2002
At 12:00 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)	
CITIZENS COMMUNICATIONS COMPANY,)	Docket No. 02-0060
KAUAI ELECTRIC DIVISION)	
and)	Order No. 19496
KAUAI ISLAND UTILITY CO-OP)	
For Approval of the Sale of Certain) Assets of Citizens Communications) Company, Kauai Electric Division) and Related Matters.)	
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ORDER

I.

By an application filed on March 15, 2002, CITIZENS COMMUNICATIONS COMPANY, KAUAI ELECTRIC DIVISION (KE) and KAUAI ISLAND UTILITY CO-OP (KIUC) (KE and KIUC collectively referred to as Applicants) request commission approval of: (1) the Amended and Restated Purchase and Sales Agreement dated March 5, 2002; (2) the assignment of KE's legislatively-granted franchise to KIUC, pursuant to Hawaii Revised Statutes (HRS) § 269-19; (3) the sale of certain of KE's assets to KIUC; and (4) the financing proposed to be obtained by KIUC for the purpose of acquiring KE's assets, pursuant to HRS § 269-17.¹

¹On April 6, 2000, KIUC and KE filed an application in Docket No. 00-0108, requesting commission approval of the sale of KE's assets to KIUC, including KE's franchise to operate as a public utility on the Island of Kauai and other matters related to said sale, pursuant to the terms and condition set forth in that certain Purchase and Sale Agreement dated February 11, 2000 (Original Application). By Decision and Order No. 17970, filed

Copies of the application were served on the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs (Consumer Advocate).

II.

On March 27, 2002, the Department of the Navy (DoN) moved to intervene. On April 3, 2002, the County of Kauai (the County) moved to intervene. By Order Nos. 19313 and 19314, filed on April 24, 2002, the commission granted the DoN's and the County's motions to intervene, respectively.

On May 22, 2002, a public hearing was held on the application in this docket at the Kauai War Memorial Convention Hall, 4191 Hardy Street, Lihue, Kauai, from approximately 4:30 p.m. to 10:15 p.m.

On May 31, 2002, the commission issued Procedural Order No. 19397 setting forth the issues, procedures, and expedited schedule governing this docket.

On April 9, 2002 and April 18, 2002, respectively, the Consumer Advocate filed its first and second submission of information requests in this docket.² Applicants filed responses to these requests on April 25, 2002 and May 15, 2002, respectively. The Consumer Advocate filed three additional submissions of information requests on May 10, 2002, May 29, 2002 and June 17, 2002, and Applicants filed their responses to these

on August 14, 2000, the commission denied the Original Application.

²Applicants included their updated responses to approximately 295 information requests previously submitted by the Consumer Advocate, DoN and the County in Docket No. 00-0108

requests on May 22, 2002, June 7, 2002 and June 25, 2002, respectively, with supplemental responses filed on July 15, 2002. DoN filed information requests on May 8, 2002, and Applicants filed their responses to these requests on May 20, 2002. The County filed three submissions of information requests on May 15, 2002, June 5, 2002 and June 24, 2002, and Applicants filed their responses to these requests on May 29, 2002, June 19, 2002 and July 5, 2002, respectively.

On July 18, 2002, the Applicants, the Consumer Advocate, and the DoN (collectively referred to as parties to the stipulation) filed a Stipulation in Lieu of Preliminary Position Statements. On July 19, 2002, the County filed its Preliminary Statement of Position.

III.

The parties to the stipulation agree and concur that obtaining financing through the Rural Utilities Service (RUS) is the preferred method of financing. The parties to the stipulation represent as follows:

- (1) KIUC has applied for financing from RUS.
- (2) Since the filing of the Application, RUS informed KIUC that KIUC's application is complete with the exception of obtaining commission approval.
- (3) Even though RUS has earmarked and is currently reserving for KIUC the \$215 million purchase price from the municipal rate loan program, it can only be reserved until September 30, 2002, the end of RUS' current fiscal year.
- (4) Funds not committed by September 30, 2002 will be lost.

to address and reflect the changes between the original application and the subject application.

- (5) Appropriations for the municipal rate loan program for fiscal year 2003 will be insufficient to fund the \$215 million purchase price, and, in any event, the Congressional Budget Office has determined that for fiscal year 2003, the municipal rate loan program will be scored differently and will result in a considerably greater cost of funding than in the current fiscal year.
- (6) To ensure that these funds can be committed by September 30, 2002 for the purchase of the KE assets, RUS has indicated to KIUC that it must receive some preliminary favorable indication from the commission by July 31, 2002 that the application will be approved. Otherwise, RUS will be required to release the municipal rate loan funds currently earmarked for KIUC to other borrowers to ensure that the funds can be utilized.

IV.

Based on the commission's preliminary review of the record, the application, as modified by the Stipulation in Lieu of Preliminary Position Statements, appears to have merit, particularly in light of the recommended approval of the application, as modified by the Stipulation in Lieu of Preliminary Position Statements and representations of the Applicants, the Consumer Advocate, and the DoN. Thus, the commission preliminarily approves the application, subject to final commission review of all pleadings and information submitted in this docket, issues raised by the County's position statement, and the conditions set forth below to ensure that the public interest is protected. Based on the representations made in the Stipulation in Lieu of Preliminary Position Statements regarding the need for a final approval by September 17, 2002 in order to have RUS municipal rate fund financing for the proposed transaction, the commission will target the issuance of a final

decision and order by that date provided that the following conditions are satisfied:

1. The RUS' \$215 million of municipal rate funds are available for KIUC at closing at a weighted average interest rate that is substantially similar to the weighted average interest rate for municipal rate funds for the third-quarter of 2002 contained in Supplemental Attachments CA-IR-15 and CA-IR-36;

2. The results or findings of the commission's review of the information and pleadings filed in this docket are consistent with the representations made in the application and the Stipulation in Lieu of Preliminary Position Statements; and

3. The results or findings of the commission's review of the information and pleadings filed in this docket satisfy the requirements of HRS §§ 269-7.5, 269-17 and 269-19.

Furthermore, in light of the September 17, 2002 target date to submit its final decision and order on this matter, the commission determines that it is also necessary to expedite the submissions of the parties' final position statements. The commission notes that its ability to issue a decision and order by September 17, 2002, depends on the parties' full and timely cooperation in responding to the commission's information requests. The burden of proof regarding this matter remains with the Applicants. Thus, we conclude that Procedural Order No. 19397, filed on May 31, 2002, should be amended to the extent that: (1) Responses to second submission of supplemental information requests and Applicant's second submission of information requests currently due September 3, 2002, should now be due on August 30, 2002; and (2) final position statements

currently due September 12, 2002, should now be due on September 10, 2002.

V.

THE COMMISSION ORDERS:

1. The request for preliminary approval submitted by the parties to the stipulation is granted, subject to final commission review of all pleadings and information submitted in this docket, issues raised by the County's position statement, and the conditions set forth below in paragraph 2, to ensure that the public interest is protected.

2. Based on the representations made in the Stipulation in Lieu of Preliminary Position Statements regarding the need for a final approval by September 17, 2002 in order to have RUS municipal rate fund financing for the transaction, the commission will target the issuance of a final decision and order by that date provided that the following conditions are satisfied:

- a. The RUS' \$215 million of municipal rate funds are available for KIUC at closing at a weighted average interest rate that is substantially similar to the weighted average interest rate for municipal rate funds for the third-quarter of 2002 contained in Supplemental Attachments CA-IR-15 and CA-IR-36;
- b. The results of the commission's review of the information and pleadings filed in this docket are consistent with the representations in the


application and the Stipulation in Lieu of Preliminary Position Statements; and


- c. The results of the commission's review of the information and pleadings filed in this docket satisfy the requirements of HRS §§ 269-7.5, 269-17 and 269-19.

3. Procedural Order No. 19397, filed on May 31, 2002, is amended to the extent that: (1) Responses to second submission of supplemental information requests and Applicant's second submission of information requests currently due September 3, 2002, should now be due on August 30, 2002; and (2) final position statements currently due on September 12, 2002 are now due on September 10, 2002. In all other respects, Procedural Order No. 19397 remains unchanged.

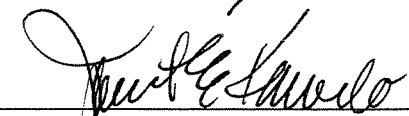
DONE at Honolulu, Hawaii this 31st day of July, 2002.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Wayne H. Kimura, Chairman

By 
Dennis R. Yamada, Commissioner

APPROVED AS TO FORM:

By 
Janet E. Kawelo, Commissioner


Kevin M. Katsura
Commission Counsel
02-0060.ac

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 19496 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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Certificate of Service - continued

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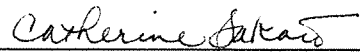
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Catherine Sakato

DATED: July 31, 2002